

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERT THOMAS RUIZ III,

Defendant and Appellant.

A144869

(Sonoma County
Super. Ct. Nos. SCR574892,
SCR589456)

Defendant appeals from an order granting his petition for resentencing under Penal Code section 1170.18.¹ He appears to believe that the trial court improperly extended his period of parole supervision when it granted the motion. Appointed counsel has filed a brief raising no issues, but requesting this court independently review the record for arguable contentions pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Defendant has been notified of his right to file a supplemental brief but has not done so. We find no arguable issues and therefore shall affirm the order.

Background

In May 2010, defendant was convicted by plea of felony possession of methamphetamine and placed on probation. In September 2010, he pled guilty to a new violation of simple possession of methamphetamine. His probation was revoked in the

¹ Penal Code section 1170.18 was enacted as part of Proposition 47 in November 2014. (Prop. 47, § 14, as approved by voters, Gen. Elec. (Nov. 4, 2014, eff. Nov. 5, 2014).) All statutory references are to the Penal Code unless otherwise noted.

first case and he was sentenced to concurrent two-year terms on each case. He was paroled from prison on those cases in September 2011.

On February 20, 2015, defendant filed a petition for resentencing pursuant to Penal Code section 1170.18 in each case. The prosecution agreed defendant was eligible for reduction of the offenses and resentencing and the court reduced both felony counts of simple possession of methamphetamine to misdemeanors.

In advance of the resentencing hearings, defendant filed a brief objecting to the imposition of any additional period of parole supervision. At the hearing on April 16, 2015, the court resentenced the defendant to credit for time served on each case and continued the defendant on parole until June 20, 2015. Defendant timely filed a notice of appeal.

Discussion

Initially, we note that while defendant's appeal may now be moot, nothing in the record establishes his successful discharge from parole on June 20, 2015. (See *People v. Osorio* (2015) 235 Cal.App.4th 1408, 1411-1412.) Accordingly, we shall review the order on the merits.

Defendant was properly resentenced in accordance with section 1170.18. Because when the petition was heard defendant was still on parole, section 1170.18, subdivisions (a) and (b) governed his petition for resentencing. (See *People v. Morales* (2015) 238 Cal.App.4th 42, 48.)

Under subdivision (a) of section 1170.18, "A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ('this act') had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act."

Under subdivision (b) of section 1170.18, “Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner’s felony sentence shall be recalled and the petitioner resentenced to a misdemeanor pursuant to Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, those sections have been amended or added by this act, unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. . . .”

Under subdivision (d) of section 1170.18, “A person who is resentenced pursuant to subdivision (b) shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence” Subdivision (e) provides, however, “Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence.”

Accordingly, the trial court did not err when, on April 16, 2015, it continued defendant on parole until the expiration of his original grant of parole on June 20, 2015.

Disposition

The order resenting defendant pursuant to section 1170.18 is affirmed.

Pollak, Acting P.J.

We concur:

Siggins, J.

Jenkins, J.